

641—85.8(135) Panel determination regarding proposed medical care decision. If a patient has been determined by the panel to be in need of surrogate decision making, the panel's determination regarding the proposed medical care shall be made in accordance with the following provisions:

85.8(1) The past or present expression of wishes by the patient will be presumed valid unless clearly overcome by other evidence. The patient's autonomy should always be respected.

85.8(2) If there is no clear preference by the patient, the panel shall make the determination whether the proposed medical care is in the best interests of the patient based upon a preponderance of the evidence by considering the following standards:

a. The burdens of the treatment to the patient in terms of pain and suffering outweighing the benefits or whether the proposed treatment would merely prolong the patient's suffering and not provide any net benefit;

b. The degree, expected duration, and constancy of pain with and without treatment, and the possibility that the pain could be mitigated by less intrusive forms of medical treatment including the administration of medications;

c. The likely prognosis, expectant level of functioning, degree of humiliation and dependency with or without the proposed medical care; and

d. Evaluation of treatment options, including nontreatment, and their benefits and risks compared to those of the proposed medical care.

85.8(3) A majority of the panel members must vote in the affirmative for a valid determination of consent to or refusal of medical care on behalf of the patient.

85.8(4) The panel determination consenting to or refusing medical care shall constitute valid consent to or refusal of such treatment in the same manner and to the same extent as if the patient were able to consent or refuse on the patient's own behalf.

85.8(5) The panel's consent to medical care shall state that any tissues or parts surgically removed may be disposed of or preserved by the provider of health services in accordance with customary practice.